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Dig. §§ 626-641, 643; Dec. Dig. § 225.* 10 Va.-W. Va. Enc. Dig. 220; 14 Va.-W. Va. Enc. Dig. 753.]

5. Appeal and Error (§ 1028*)—Harmless Error—Evidence.—Erroneous rulings on evidence are harmless where, if correct rulings had been made, the judgment could not have been different.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4034; Dec. Dig. § 1028.* 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

Error to Circuit Court of City of Norfolk.

Ejectment by the City of Norfolk against the Southern Railway Company and another. Judgment for defendants, and plaintiff brings error. Affirmed.

Geo. C. Cabell, of Norfolk, *S. S. Field* and *Geo. A. Frick*, both of Baltimore, and *G. A. Williams* and *Geo. Pilcher*, both of Norfolk, for plaintiff in error.

Williams, Tunstall & Thom, of Norfolk, *W. B. McIlwaine*, of Petersburg, and *D. Tucker Brooke*, of Norfolk, for defendants in error.

CARSON *v.* J. L. MOTT IRON WORKS.

Jan. 12, 1915. Rehearing Denied Jan. 27, 1915.

[84 S. E. 12.]

1. Partnership (§ 123*)—Contracts of Guaranty—Evidence.—Evidence held to sustain a finding that a partner expressly authorized a contract of guaranty in the name of the firm so as to bind him.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 188; Dec. Dig. § 123.* 10 Va.-W. Va. Enc. Dig. § 897.]

2. Guaranty (§ 56*)—Principal and Surety—(§ 104*)—Discharge of Surety—Extension of Time for Payment.—A surety for or a guarantor of a debt is discharged, where the time of payment is extended for a definite period, without his consent, by a binding agreement between the creditor and the principal debtor.

[Ed. Note.—For other cases, see Guaranty, Cent. Dig. § 67; Dec. Dig. § 56; Principal and Surety, Cent. Dig. §§ 186-190, 193-195, 197-199, 200; Dec. Dig. § 104.* 6 Va.-W. Va. Enc. Dig. 781; 14 Va. W. Va. Enc. Dig. 500; 15 Va. W. Va. Enc. Dig. 449.]

3. Guaranty (§ 56*)—Discharge of Guarantor—Extension of Time for Payment.—A firm guaranteed all accounts a corporation might make with a certain creditor who accepted the guaranty. After the maturity of a debt due from the corporation to the creditor, the corporation gave a note therefor, payable within two months, and on

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

maturity it was reduced by partial payment, and a renewal note due in two months was executed. When the renewal became due, or shortly thereafter, the corporation was insolvent. Held, that the firm was discharged from liability as guarantor, unless consent to the extension of time was given.

[Ed. Note.—For other cases, see Guaranty, Cent. Dig. § 67; Dec. Dig. § 56.* 6 Va.-W. Va. Enc. Dig. 781; 14 Va.-W. Va. Enc. Dig. 500; 15 Va.-W. Va. Enc. Dig. 449.]

4. Appeal and Error (§ 1010*)—Findings—Conclusiveness.—A finding of facts has the effect of a verdict, and cannot be disturbed on appeal, as contrary to evidence, unless it is plainly so, or is without evidence to support it.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3979-3982, 4024; Dec. Dig. § 1010.* 1 Va.-W. Va. Enc. Dig. 622; 14 Va.-W. Va. Enc. Dig. 101; 15 Va.-W. Va. Enc. Dig. 75.]

5. Guaranty (§ 91*)—Extension of Time of Payment of Debt—Consent of Guarantor—Evidence—Sufficiency.—Evidence held to sustain a finding that a guarantor consented to an extension of time for the payment of the debt, and hence was not discharged because of the extension.

[Ed. Note.—For other cases, see Guaranty, Cent. Dig. § 104; Dec. Dig. § 91.* 6 Va.-W. Va. Enc. Dig. 781; 14 Va.-W. Va. Enc. Dig. 500; 15 Va.-W. Va. Enc. Dig. 449.]

6. Evidence (§ 76*)—Presumptions—Failure of Defendant to Testify.—Failure of defendant to testify as to matters peculiarly within his knowledge, after plaintiff has introduced evidence tending to prove his case, raises a strong suspicion that his testimony, if given, would operate to his prejudice, and may be considered by the court or jury trying the case in determining the facts.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 96; Dec. Dig. § 76.* 11 Va.-W. Va. Enc. Dig. 328; 14 Va.-W. Va. Enc. Dig. 839; 15 Va.-W. Va. Enc. Dig. 820.]

7. Guaranty (§ 91*)—Extension of Time of Payment—Consent—Evidence.—The consent of a guarantor to an extension of time to pay the debt guaranteed may be proved by circumstantial or direct evidence.

[Ed. Note.—For other cases, see Guaranty, Cent. Dig. § 104; Dec. Dig. § 91.* 6 Va.-W. Va. Enc. Dig. 781; 14 Va.-W. Va. Enc. Dig. 500; 15 Va.-W. Va. Enc. Dig. 449.]

8. Appeal and Error (§ 762*)—Questions Reviewable—Reply Brief.—It is too late, as a general rule, to assign error for the first time in a reply brief.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

3097; Dec. Dig. § 762.* 1 Va.-W. Va. Enc. Dig. 503; 15 Va.-W. Va. Enc. Dig. 59.]

9. New Trial (§ 102*)—Newly Discovered Evidence—Diligence.—A new trial for newly discovered evidence is properly denied, where the movant's knowledge of the situation was such that, by ordinary diligence in searching for evidence, he would and could have ascertained what the newly discovered witness would have testified to.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 207, 210-214; Dec. Dig. § 102.* 10 Va.-W. Va. Enc. Dig. 448; 14 Va.-W. Va. Enc. Dig. 780; 15 Va.-W. Va. Enc. Dig. 739.]

Error to Law and Equity Court of City of Richmond.

Action by the J. L. Mott Iron Works against J. Preston Carson and another. Judgment for plaintiff, and defendant Carson brings error. Affirmed.

Wm. P. De Saussure and *J. Kent Rawley*, both of Richmond, for plaintiff in error.

C. M. Chichester, of Richmond, for defendant in error.

GWATHMEY et al. v. LYONS.

Nov. 11, 1914. Rehearing Denied Nov. 21, 1914. . .

[84 S. E. 103.]

A petition by G. T. Gwathmey and others, members of the commission of Roads, for a peremptory writ of mandamus against S. W. Lyons. Denied.

Bowden & Heard, of Norfolk, for petitioners.

Jos. T. Lawless, of Norfolk, and *Frank L. Crocker*, of Portsmouth, for respondent.

Prayer for mandamus denied.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.